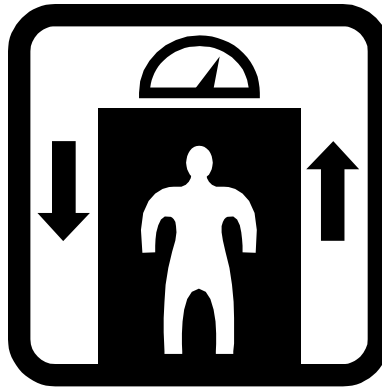


ARKANSAS ELEVATOR SAFETY RULES AND REGULATIONS



**Arkansas Department of Labor
Elevator Safety Division
10421 West Markham
Little Rock, Arkansas 72205-2190**

**010.05 Administrative Regulations of the Elevator Safety Board
for the Elevator Safety Division of the Arkansas Department of
Labor**

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010.05 Administrative Regulations of the Elevator Safety Board for the Elevator Safety Division of the Arkansas Department of Labor

010.05-001 Statement of Organization and Operations

The Arkansas Department of Labor is an agency of state government created by Act 161 of 1937, Ark. Code Ann. § 11-2-101 *et seq.* The Elevator Safety Board was created by Act 189 of 1963, Ark. Code Ann. § 20-24-105, and given regulatory authority over the construction, alteration, repair, maintenance, operation, and inspection of elevators, escalators, moving sidewalks, dumbwaiters, and wheelchair lifts, and the power to oversee the licensure of elevator inspectors, elevator mechanics, and elevator contractors. The Arkansas Department of Labor is charged with enforcement of the state's laws regarding elevator safety, as well as the regulations promulgated by the Elevator Safety Board, Ark. Code Ann. § 20-24-104. Ultimate authority for the operation of the agency is in the Director of the Department of Labor. For administrative purposes, the Director has created the Elevator Safety Division which is responsible for administering and enforcing state law and the regulations of the Elevator Safety Board. The individual charged with the day-to-day operations of the Elevator Safety Division is referred to as Chief Elevator Inspector, who is selected by the Director and is directly supervised by the Code Enforcement Administrator. From time to time, the board promulgates rules.

010.05-002 Information for Public Guidance

The mailing address and telephone number for the Elevator Safety Division is:

Elevator Safety Division
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
(501) 682-4538

The Department of Labor makes available a list of persons holding certain responsibilities for handling FOIA requests, licensing ques-

tions, and complaints against licensees so that the public may obtain information about the agency or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the agency's office or Web site.

The agency has a list of official forms used by the agency and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the agency's office or Web site. The Department of Labor Web site is: <http://www.arkansas.gov/labor/>. The Elevator Safety Division's Web site is: http://www.arkansas.gov/labor/divisions/elevator_p1.html. Copies of all forms used by the agency, written statements of policy and written interpretative memoranda, and all orders issued by the agency may be obtained from the agency's office.

010.05-003 General Organization

A. The Elevator Safety Division is generally divided into an office staff and a field staff. The field staff is composed of Elevator Inspectors.

B. The Elevator Safety Board consists of five (5) members, one (1) of whom is the Director of the Department of Labor, who serves as Chairman. A quorum for the transaction of business is a majority of the members.

C. All public meetings, including meetings of the Elevator Safety Board will be conducted pursuant to Robert's Rules of Order and in conformity with the Arkansas Freedom of Information Act. Regular meetings will be held every other month. Special meetings may be held on the call of the Chairman.

D. The board or the agency may create standing and ad hoc committees. The Chairman will select members of committees. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

E. The Chief Elevator Inspector will prepare the agenda for regular and special meetings. The agenda will be distributed to board members and agency staff and made available to the public in advance of the meeting. The agenda should state with specificity the

items that will be considered at a meeting, hearing, or workshop. The agenda should include the following topics as applicable:

1. The call to order;
2. Review of minutes;
3. Old business;
4. New business;
5. Other business;
6. Adjudicatory hearings;
7. Rule-making hearings; and
8. Public comment.

The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the agency. Additionally, the agenda may be amended by appropriate motion.

010.05-004 Purpose and Scope

A. Purpose

1. The purpose of these regulations is to establish:
 - a. minimum safety standards for the maintenance, inspection, tests, and operation of all elevators and escalators and other conveyances;
 - b. minimum safety standards for the construction of new elevators, dumbwaiters, escalators and other conveyances;
 - c. minimum safety standards for the alteration of existing elevators, dumbwaiters, escalators and other conveyances;
 - d. minimum safety standards for existing elevators, escalators, dumbwaiters and other conveyances;
 - e. rules prescribing fees;
 - f. rules for the application and granting of variances and exceptions;
 - g. minimum standards for licensing and qualifying elevator inspectors, elevator contractors, and elevator mechanics;

and

h. rules for the effective administration and enforcement of the Elevator Safety Law, Ark. Code Ann. § 20-24-101 *et seq.*

2. These regulations are intended to protect the general public, invitees, guests, employees, and all persons who could be reasonably expected to use an elevator, escalator, dumbwaiter or other conveyance.

B. Scope and Application

1. These regulations apply to all elevators, escalators, dumbwaiters and other conveyances in the State of Arkansas, except as specifically exempted herein.

2. These regulations do not apply to:

a. a conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials and is not used for elevating or lowering workers or other riders, including those workers loading and unloading;

b. tiering, piling, feeding, or similar machines or devices giving service within only one (1) story.

3. Conveyances installed in private single-family dwellings are exempt from the testing and inspection requirements of Ark. Code Ann. § 20-24-112 and the permitting requirements of Ark. Code Ann. §§ 20-24-115 and -116.

010.05-005 Definitions

As used in these regulations, unless the context otherwise requires:

A. "Alteration" means any change made to an existing elevator, dumbwaiter, escalator or other conveyance, or to its hoistway, enclosure, or doors other than the repair or replacement of damaged,

worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration;

B. "Authorized representative" means the building department of cities, towns, or other governmental subdivisions designated by the Department of Labor to enforce certain provisions of Ark. Code Ann. § 20-24-101 *et seq.*;

C. "Board" means the Arkansas Elevator Safety Board;

D. "Conveyance" means an elevator, dumbwaiter, escalator, moving sidewalk, automatic people mover, platform lift or stairway chair lift;

E. "Director" means the Director of the Department of Labor;

F. "Department" means the Department of Labor;

G. "Dormant elevator, dumbwaiter, or escalator" means an elevator or dumbwaiter whose cables have been removed, whose car and counterweight rest at the bottom of the shaftway, and whose shaftway doors are permanently boarded up or barricaded on the inside or an escalator whose main power feed lines have been disconnected;

H. "Dumbwaiter" means a hoisting and lowering mechanism, driven by mechanical power, equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine (9) square feet, whose total compartment height does not exceed four feet (4'), the capacity of which does not exceed five hundred pounds (500 lbs.), and which is used exclusively for carrying freight;

I. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction;

1. The term "elevator" shall not include a, conveyor chain bucket hoist, construction hoist, or similar devices used for the primary purpose of elevating or lowering materials, nor shall it include tiering, piling, feeding, or similar machines or devices giving service within only one (1) story;

2. The term "power elevator" shall mean those driven by

the application of energy other than hand or gravity;

3. "Hand elevators" shall mean those driven by manual power;

4. The term "elevator" shall include vertical wheelchair lifts, inclined wheelchair lifts, and inclined stairway chairlifts installed in any location, including a private, single-family dwelling for use by individuals with physical disabilities;

J. "Escalator" means a power-driven, inclined, continuous stairway or runway used for raising or lowering passengers;

K. "Freight elevator" means an elevator used for carrying freight and on which only the operator and the persons necessary for loading and unloading are permitted to ride; and

L. "Passenger elevator" means an elevator that is used to carry persons other than the operator and persons necessary for loading and unloading.

010.05-006 Rule-Making

A. Authority

The board has been authorized by the Legislature to promulgate rules. Ark. Code Ann. § 20-24-106(b). The board follows the procedural requirements of the Arkansas Administrative Procedure Act, in particular Ark. Code Ann. § 25-15-203 and § 25-15-204. Additionally, the agency is required to abide by the provisions of Ark. Code Ann. §10-3-309.

B. Initiation of Rule-Making

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to "rule-making") may be initiated by request of the board that the staff submit proposed drafts. Additionally, staff of the agency may request permission of to initiate rule-making. Third persons outside the agency may petition for the issuance, amendment, or repeal of any rule.

C. Petition to Initiate Rule-Making

Third parties may initiate rule-making to adopt, amend, or repeal a rule by filing a petition with the agency to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the agency or has a substantial interest in the rule or action requested.

The petition to initiate rule-making shall be filed with the Director of the Department of Labor.

Within thirty (30) days after submission of the petition, the board will either deny the petition, stating its reasons in writing, or will initiate rule-making. A special meeting will be called if necessary to meet this time frame.

D. Pre-Filing with the Bureau of Legislative Research

Thirty (30) days before the public-comment period ends, the agency will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by Ark. Code Ann. § 10-3-309.

E. Public Input

1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the board will receive public input through written comments and/or oral submissions. The agency will designate in its public notice the format and timing of public comment.

2. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the agency to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.

3. The Director or his designee may preside at the public hearing. The agency must ensure that the agency personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the

proposal and to respond to questions or comments regarding the proposed rule.

4. The agency will preserve the comments made at the public hearing by a tape recording.

5. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the board and be made a part of the rule-making record.

F. Notice of Rule-Making

The agency will give notice of proposed rule-making to be published pursuant to Ark. Code Ann. § 25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

G. The Decision to Adopt a Rule

1. The board will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

2. Before acting on a proposed rule, the board will consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.

3. The board may use its own experience, specialized knowledge, and judgment in the adoption of a rule or consider the experience, specialized knowledge and judgment of agency staff.

H. Variance Between Adopted Rule and Published Notice of Proposed Rule

1. The board may not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:

- a. The final rule is in character with the original scheme and was a logical outgrowth of

the notice and comments stemming from the proposed rule, or

- b. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

2. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question; the board must consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests; and
- b. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

I. Concise Statement of Reasons

1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the agency shall issue a concise statement of the principal reasons for and against the adoption of the rule. Requests for such a statement must be in writing and be delivered to the Director of the Department of Labor. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the agency.

2. The concise statement of reasons must contain:
 - a. The board's reasons for adopting the rule;
 - b. An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and
 - c. The principal reasons urged in the rule-making procedure for and against the rule, and the board's reasons for overruling the arguments made against the rule.

J. Contents

The agency shall cause the board's rules to be published and made available to interested persons. The publication must include:

1. The text of the rule; and
2. A note containing the following:
 - a. The date(s) the board adopted or amended the rule;
 - b. The effective date(s) of the rule;
 - c. Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
 - d. Citation to the entire specific statutory or other authority authorizing the adoption of the rule;
3. The publication of the rule(s) must state the date of publication.

K. Format

The published rules of the board will be organized substantially in the following format:

1. Statement of Organization and Operations
2. Information for Public Guidance

3. General Organization
4. Purpose and Scope
5. Definitions
6. Rule-making
7. Emergency Rule-making
8. Declaratory Orders
9. Adjudicative Hearings
10. Licensing
11. Et seq. Substantive rules and other rules of Agency

L. Incorporation by Reference

By reference in a rule, the board may incorporate all or any part of a code, standard, rule, or other matter if the board finds that copying the matter in the board's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the rule must fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such a matter by reference in a proposed or adopted rule only if the agency makes copies of the incorporated matter readily available to the public. The rules must state how and where copies of the incorporated matter may be obtained at cost from the agency, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The agency must retain permanently a copy of any materials incorporated by reference in a rule of the board.

M. Filing

1. After the board formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Counsel, the agency staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by Ark. Code Ann. § 25-15-204(d).

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by the Legal Division of the Arkansas Department of Labor.

3. Notice of the rule change will be posted on the agency Web page.

010.05-007 Emergency Rule-Making

A. Request for Emergency Rule-Making

The proponent of a rule may request the board to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Rule 010.05-006(C), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

B. Finding of an Emergency

Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the board will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the board determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for its finding that an emergency exists. Upon making this finding, the board may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

C. Effective Date of Emergency Rule

The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency will file with the rule the board's written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Ark. Code Ann. § 25-15-204(e). The agency will take appropriate measures to make emergency rules known to persons who may be affected by them.

010.05-008 Declaratory Orders

A. Purpose and Use of Declaratory Orders

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

B. The Petition

The process to obtain a declaratory order is begun by filing with the Director of the Department of Labor a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before Arkansas Department of Labor.
2. The name, address, telephone number, and facsimile number of the petitioner.
3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
4. The statutory provision(s), board rule(s), or agency or board order(s) on which the declaratory order is sought.
5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.
6. The signature of the petitioner or petitioner's attorney.
7. The date.

8. Request for a hearing, if desired.

C. Agency Disposition

1. The agency may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. §§ 25-15-208 and 25-15-213, and the agency's rules for adjudicatory hearings.

2. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

010.005-009 Adjudicative Hearings

A. Scope of This Rule

This Rule, 010.005-009, applies in all administrative adjudications conducted by the Board of Elevator Safety or the Elevator Safety Division of the Arkansas Department of Labor. This procedure is developed to provide a process by which the board or agency formulates orders (for example, an order revoking a license to practice, or imposing civil penalties).

B. Presiding Officer

The Director of the Department of Labor, who is Chairman of the board, shall preside at a hearing before the board or may designate one or more members of the board or one or more examiners, referees, or hearing officers to preside at a hearing. The Director of the Department of Labor shall designate one or more examiners, referees, or hearing officers to preside at a hearing before the Department of Labor.

C. Appearances

1. Any party appearing has the right, at his or her own expense, to be represented by counsel.

2. The respondent may appear on his or her own behalf.
3. Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.
4. Service on counsel of record is the equivalent of service on the party represented.
5. On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

D. Consolidation

If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

E. Notice to Interested Parties

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

F. Service of Papers

Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

G. Initiation and Notice of Hearing

1. An administrative adjudication is initiated by the issuance by the agency of a notice of hearing.
2. The notice of hearing will be sent to the respondent

by U.S. mail, return receipt requested, delivery restricted to the named recipient or his agent, as well as by regular U. S. mail. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the agency.

3. Notice will be mailed at least twenty (20) days before the scheduled hearing.

4. The notice will include:

a. a statement of the time, place, and nature of the hearing;

b. a statement of the legal authority and jurisdiction under which the hearing is to be held; and

c. a short and plain statement of the matters of fact and law asserted.

H. Motions

All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the agency. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Director, will not enter a dispositive order unless expressly authorized in writing to do so.

I. Answer

A respondent may file an answer.

J. Discovery

1. Upon written request, the agency will provide the information designated in Ark. Code Ann. § 25-15-208(a)(3).

2. Such requests should be received by the agency at least ten (10) days before the scheduled hearing.

K. Continuances

1. The presiding officer may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlements;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirement;
- g. The existence of a conflict of the schedules of counsel, parties, or witnesses;
- h. The time limits of the request; and
- i. Other relevant factors.

2. The presiding officer may require documentation of any grounds for continuance.

L. Hearing Procedures

1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Director shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

2. All objections must be made in a timely manner and

stated on the record.

3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.

4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the agency, may submit briefs and engage in oral argument.

5. The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

M. Order of Proceedings

The presiding officer will conduct the hearing in the following manner:

1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.

2. The parties are to be given the opportunity to present opening statements.

3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.

4. Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-examination as well as questioning by the board and the agency. The presiding officer may limit questioning in a manner consistent with the law.

5. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

N. Evidence

1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

2. Stipulation of facts is encouraged. The agency may make a decision based on stipulated facts.

3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

4. A party seeking admission of an exhibit must provide seven (7) copies of each exhibit at a hearing before the Elevator Safety Board and three (3) copies of any exhibit in a hearing before the Elevator Safety Division. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

8. Reasonable inferences. The finder of fact may base its findings of fact upon reasonable inferences derived from other evi-

dence received.

O. Default

If a party fails to appear or participate in an administrative adjudication after proper service of notice, the agency or board may proceed with the hearing and render a decision in the absence of the party.

P. Subpoenas

1. At the request of any party, the Director of the Department of Labor shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the agency may authorize the subpoena to be served less than two days before the hearing.

3. Any motion to quash or limit the subpoena shall be filed with the agency and shall state the grounds relied upon.

Q. Recording the Proceedings

The responsibility to record the testimony heard at a hearing is borne by the agency. Upon the filing of a petition for judicial review, the agency will provide a transcript of testimony taken before the board. If the board is successful upon appeal, the agency may request that the court assess the costs against the opposing party.

R. Factors to be Considered in Imposing Sanctions or Fines

In addition to any other considerations permitted by Ark.

Code Ann. §§ 20-24-101 *et seq.*, if applicable, the agency in imposing any sanction or fine may consider the following:

1. The nature and degree of the misconduct for which the sanction is being sought.
2. The seriousness and circumstances surrounding this misconduct.
3. The loss or damage to clients or others.
4. The assurance of future compliance.
5. The profit to the wrongdoer.
6. The avoidance of repetition.
7. Whether the conduct was deliberate, intentional, or negligent.
8. The deterrent effect on others.
9. The conduct of the individual during the course of the disciplinary proceeding.
10. Any prior enforcement or disciplinary actions or sanctions, including warnings.
11. Matters offered in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the individual demonstrates that he or she is successfully pursuing in good faith a program of recovery.

S. Final Order

The agency will serve on the respondent a written order that reflects the action taken by the board. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

010.05-010 Licensing

A. General

1. All action of the Elevator Safety Board or the Elevator Safety Division regarding licensure shall be governed by Ark. Code Ann. §§ 20-24-101 *et seq.* and these Rules and, when applicable, Ark. Code Ann. §§ 25-15-208 to -213.

2. The Elevator Safety Board is responsible for licensure of elevator inspectors, Ark. Code Ann. § 20-24-108(a); elevator mechanics, Ark. Code Ann. § 20-24-108(b); and elevator contractors, Ark. Code Ann. § 20-24-108(c).

B. Requirement to Keep Current Addresses on File

All persons holding a license issued by the agency are required to provide the agency with information so that the agency can remain in contact and provide notice of complaints and/or hearings. The licensee holder is required to provide written notice to the board of any change in business and/or residence address within 10 working days of the change. Service of notices of hearing sent by mail will be addressed to latest address on file with the agency.

C. Review of Application

The application and supporting documentation will be reviewed by staff of the Elevator Safety Division. The division will inform the applicant in writing if it determines that the application is incomplete, and will specify why the application is incomplete. When a completed application, a supplemental application, or the requested information is returned, the division will reinitiate action on the application for license. If all requirements are met, the applicant will be licensed.

D. Denial of License

1. If a preliminary determination is made that the appli-

cation should be denied, the division will inform the applicant of the opportunity for a hearing on the application.

2. The grounds or basis for the proposed denial of a license will be set forth in writing by the agency. The applicant may appeal the agency's determination to the Elevator Safety Board by making a written request to the Board for a hearing within thirty (30) days of the notice of denial. Any hearing on the denial of a license will be conducted in accordance with Ark. Code Ann. §§ 25-15-208 and -213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

E. Suspension, Revocation, Annulment or Withdrawal

1. Prior to the entry of a final order to suspend, revoke, annul, or withdraw a license, or to impose other sanctions upon a licensee, the division will serve the licensee a notice of hearing in the manner set out in Ark. Code Ann. § 25-15-208 and Rule 010.05-009 herein.

2. The agency has the burden of proving the alleged facts and violations of law stated in the notice.

F. Emergency Action

1. If the board finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the board can summarily suspend, limit, or restrict a license. The notice requirement in Rule 010.05-009(G) does not apply and must not be construed to prevent a hearing at the earliest time practicable.

2. Emergency Order:

An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively require emergency action to be taken by the board. The written order must include notification of the date on which board proceedings are scheduled for completion.

Written Notice. The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order. One or more of the following procedures will be used:

- a. Personal delivery;
- b. Certified mail, return receipt requested, to the last address on file with the agency;
- c. First class mail to the last address on file with the agency;
- d. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.
- e. Oral notice. Unless the written emergency order is served by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

3. Unless otherwise provided by law, within ten (10) days after emergency action taken pursuant to paragraph F1 of this Rule, the division must initiate a formal suspension or revocation proceeding.

G. Voluntary Surrender of License

The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the board's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

H. Duty of a Sanctioned Licensee

In every case in which a license is revoked, suspended, or surrendered, the licensee shall, within thirty (30) days of the revocation, suspension, or surrender, do the following:

1. Return his or her license and any license pocket cards to the division's office;
2. Notify all of his or her clients and employer in writing that his or her license has been revoked, suspended, or surrendered;

3. Notify all clients and employer to make arrangements for other services, calling attention to any urgency in seeking the substitution of another licensee;

4. Deliver to all clients or employer any papers or property to which they are entitled, or notify the client or employer of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

5. Refund any part of the fees paid in advance that have not been earned;

6. Keep and maintain a record of the steps taken to accomplish the foregoing;

7. File with the division a list of all other state, federal, and administrative jurisdictions by which he or she is licensed. Upon such filing, the agency will notify those entitled of the revocation, suspension, or surrender; and

8. The licensee shall, within thirty (30) days of revocation, suspension, or surrender of the license, file an affidavit with the agency that he or she has fully complied with the provisions of the order and completely performed the foregoing or provide a full explanation of the reasons for his or her non-compliance. Such affidavit shall also set forth the address where communications may thereafter be directed to the respondent.

I. Reinstatement After Suspension

1. An order suspending a license may provide that a person desiring reinstatement may file with the Director of the Department of Labor a verified petition requesting reinstatement.

2. The petition for reinstatement must set out the following:

a. That the individual has fully and promptly complied with the requirements of Rule 010.05-010(H) of these rules pertaining to the duty of a sanctioned professional;

b. That the individual has refrained from prac-

ticing in this occupation or business during the period of suspension;

c. That the individual's license fee is current or has been tendered to the agency; and

d. That the individual has fully complied with any requirements imposed as conditions for reinstatement.

3. Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.

4. Failure to comply with the provisions of sections H7 and H8 of this Rule precludes consideration for reinstatement.

5. No individual will be reinstated unless the board approves reinstatement by majority vote.

J. Re-Licensure for Revoked or Surrendered License

1. No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the board. The application for re-licensure is not allowed until at least two (2) years after the revocation or surrender of license took effect.

2. The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to Ark. Code Ann. § 20-24-101 *et seq.*

3. The board may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

4. The board may require that the person seeking re-licensure take the licensing examination.

K. Inspectors

1. Qualifications. An applicant for an elevator inspector's license shall complete an application approved by the board and shall have:

a. at least four (4) years verified experience in designing, installing, maintaining, or inspecting conveyances;

b. successfully passed the written examination for elevator inspectors administered by an accredited ASME testing facility and evidenced by certification of the applicant as a Qualified Elevator Inspector. This is commonly referred to as being QEI certified;

c. no financial interest in any business or operation which manufactures, installs, repairs, modifies or services conveyances and have submitted a financial disclosure statement on a form approved by the division. This qualification does not prohibit employees of insurance companies insuring conveyances in Arkansas from obtaining a license as an elevator inspector;

d. submitted proof of insurance by an insurance company authorized to do business in Arkansas of general liability coverage for at least one million dollars (\$1,000,000) for injury or death of a person and five hundred thousand dollars (\$500,000) for property damage; and

e. tendered a license fee in the amount of one hundred dollars (\$100.00).

2. License Renewal. An application for renewal shall be submitted no later than January 31 of each calendar year, regardless of the date of issue or renewal and shall be submitted with:

a. a license fee in the amount of one hundred dollars (\$100.00);

b. proof of insurance as required by this Rule, 010.05-010(K)(1);

c. an annual financial disclosure statement on a form approved by the division; and

d. proof of completion of eight (8) contact hours or continuing education hours every two (2) years in a course of training or instruction approved by the board as required by Rule 010.05-010(Q).

3. Elevator inspectors in the employ of the Department of Labor are exempt from payment of licensing fees and fees for renewal of license.

L. Elevator Contractors

1. Qualifications. An applicant for an elevator contractor's license shall complete an application approved by the board and shall have:

a. a permanent office located in the State of Arkansas with an individual designated by the contractor to receive notices on behalf of the contractor or be currently registered with the Secretary of State with a designated agent for service of process who is also authorized to receive notices on behalf of the contractor;

b. submitted verification of employment of a licensed elevator mechanic;

c. submitted proof of insurance by an insurance company authorized to do business in Arkansas of general liability coverage for at least one million dollars (\$1,000,000) for injury or death of a person and five hundred thousand dollars (\$500,000) for property damage; and

d. tendered a license fee in the amount of two hundred and fifty dollars (\$250).

2. License Renewal. An application for renewal shall be submitted no later than January 31 of each calendar year, regardless of the date of issue or renewal and shall be submitted with:

a. a license fee in the amount of two hundred and fifty dollars (\$250); and

b. proof of insurance as required by this Rule, 010.05-010(L)(1).

M. Elevator Mechanics

1. Qualifications. An applicant for an elevator mechanic's license shall complete an application approved by the board and shall have:

- a. at least three (3) years verified work experience in constructing, maintaining, servicing, or repairing conveyances;
- b. successfully passed a written examination approved for elevator mechanics by the board; and
- c. tendered a license fee in the amount of seventy-five dollars (\$75) annually.

2. Restricted License. A restricted class of elevator mechanic's license shall be known as an "Accessibility Technician". Such class of license shall be restricted to performing work involving vertical platform lifts, wheelchairs lifts, and inclined stairway chairlifts, including those for private residences, which are covered by the provisions of ASME A18.1 2005. An applicant for such a restricted license shall complete an application approved by the board and shall have:

- a. at least three (3) years verified work experience in constructing, maintaining, servicing, or repairing those conveyances covered by ASME A18.1 2005;
- b. successfully passed a written examination approved for a restricted license by the board; and
- c. tendered a license fee in the amount of seventy-five dollars (\$75) annually.

3. License Renewal. An application for renewal shall be submitted no later than January 31 of the year of expiration, regardless of the date of issue or renewal and shall be submitted with:

- a. a license fee in the amount of one hundred and fifty dollars (\$150) for two years; and
- b. proof of completion of eight (8) contact hours or continuing education hours every two (2) years in a course of training or instruction approved by the board as required by Rule 010.05-010(Q).

4. Emergency Licensing and Temporary Licensing.

- a. Whenever an emergency exists or there is a

strike or lock-out and the board determines that there are not enough licensed elevator mechanics to perform the work necessary to provide for the safety of life, limb, and property and to protect the public welfare, the board may waive the examination requirements of these Rules and the provisions of Ark. Code Ann. § 20-24-108, and issue an emergency elevator mechanic's license that may be valid for no longer than thirty (30) days.

b. Whenever the department determines that there are not enough licensed elevator mechanics available to perform work necessary for the completion of a project for which the division has issued an installation permit pursuant to Rule 010.05-011 or 010.05-012 and Ark. Code Ann. § 20-25-115(d), the department may waive the requirements of these Rules and the provisions of Ark. Code Ann. § 20-24-108, and issue a temporary elevator mechanics license that may be valid for no longer than thirty (30) days. The denial of such a temporary license may be appealed to the board.

c. The board may renew an emergency or temporary license if the circumstances justifying its original issuance continue.

d. The fee for an emergency or temporary license shall be seventy-five dollars (\$75.00) annually for a license valid in only thirty (30) day increments.

N. License Renewal, Generally

1. A license may be renewed within six (6) months after the date of expiration by paying the renewal fee and a late fee of twenty dollars (\$20), provided the licensee is otherwise qualified for renewal. If a license is not renewed within six (6) months after the date of expiration, the licensee shall be required to take an new examination.

2. A license will not be issued or renewed if there is an unpaid fine or fee due the agency. Further, failure to pay any fine or fee may result in license suspension or revocation.

O. Reciprocity

The board may license a person as an elevator inspector, elevator mechanic, or elevator contractor without examination if he or she holds an equivalent license for a state or city that has a standard of examination substantially equal to that provided for in these Rules and Ark. Code Ann. § 20-24-108.

P. Verified Work Experience

1. Work experience required for licensure shall be documented by notarized letters or affidavits from past or present employers, official letters or certifications from other government licensing authorities detailing the duration and character of the work, or equivalent evidence that verifies work experience. The name, address, and telephone number of anyone verifying work experience shall be provided on the verification document.

2. For purposes of determining experience qualification, the board shall not consider the following:

a. any experience obtained in violation of Ark. Code Ann. § 20-24-108; or

b. any experience obtained in violation of any federal, state or local licensing or registration requirements.

Q. Continuing Education

1. Licensed inspectors and licensed elevator mechanics must complete eight (8) contact hours or continuing education hours every two calendar year beginning January, 2007. For any license renewed in January 2009 or thereafter, the applicant must submit proof of having completed this requirement.

2. A certificate of completion provided to the course participant is sufficient for any course pre-approved by the Elevator Safety Board. If the course has not been approved by the Board, the licensee will not be given credit unless or until the Board has approved the course.

3. A course of training or education may be approved by the board by the submission of an Application for Continuing Education Approval; an overview of the course material; and a professional resume of the trainer.

4. A list of approved courses will be posted on the agency's website or made available upon request to the Elevator Safety Division.

R. Grandfather Provision

1. An applicant for an elevator mechanic's license who submits an application before August 12, 2006, may be licensed without examination if the applicant meets all other requirements for licensure.

2. A grandfather applicant who has not obtained a license or paid the required license fee by January 1, 2007, shall be required to take an examination.

3. The grounds or basis for the proposed denial of a license will be set forth in writing by the agency. The applicant may appeal the agency's determination to the Elevator Safety Board by making a written request to the Board for a hearing within thirty (30) days of the notice of denial. Any hearing on the denial of a license will be conducted in accordance with Ark. Code Ann. §§ 25-15-208 and -213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

S. Prohibitions and Requirements

1. No elevator inspector shall inspect an elevator, escalator, or dumbwaiter if the inspector, or any member of his immediate family, has a financial interest in the building in which the elevator, escalator, or dumbwaiter is located, or in any business which occupies the building in which the elevator, escalator, or dumbwaiter is located.

2. No elevator inspector or any member of his immediate family shall have or maintain a financial interest in any business which manufactures, installs, alters, or services elevators, escalators, or dumbwaiters.

3. No elevator inspector shall recommend or refer one of his clients or customers to a specific business, firm, or corporation which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

4. Financial Disclosure. On or before the last day of January of each year, all licensed elevator inspectors shall file with the department a financial disclosure statement on forms provided by the department and approved by the board. Such forms shall include, but not be limited to, the following:

- a. the name and address of any corporation,

firm, or enterprise in which the person has a direct financial interest of a value in excess of one thousand dollars (\$1,000.00). Policies of insurance issued to himself or his spouse are not to be considered a financial interest;

b. a list of every office or directorship held by himself or his spouse, in any corporation, firm, or enterprise subject to jurisdiction of the board;

c. a list showing the name and address of any person, corporation, firm, or enterprise from which the person received compensation in excess of one thousand five hundred dollars (\$1,500) during the preceding year; and

d. a list showing the name and address of any person, corporation, firm, or enterprise from which the persons received compensation in excess of twelve thousand five hundred dollars (\$12,500) during the preceding year.

5. An elevator contractor shall perform all scheduled maintenance and required safety tests in a timely manner as notified by the Elevator Safety Division.

6. No elevator contractor shall employ helpers or apprentices not licensed as elevator mechanics to erect, construct, alter, replace, repair, maintain, remove, or dismantle any conveyance unless such helper or apprentice is working under the direct supervision of a licensed elevator mechanic, except in a ratio of 1 helper or apprentice to every one licensed elevator mechanic; or, in the event of a crew of 5 or more workers, a ratio of 3 helpers or apprentices to every two licensed elevator mechanics. Notwithstanding the provisions of this Rule, an industrial employer utilizing its own employees for repair or alteration work on industrial property owned or leased by the employer, may utilize a ratio of 4 helpers or apprentices to every one licensed elevator mechanic.

010.05-011 New Construction and Installation

A. Minimum Standards

1. All new elevators, escalators, and dumbwaiters shall be constructed and installed in conformity with the standards in The

American Society of Mechanical Engineers Safety Code for Elevators and Escalators, ASME A17.1 - 2007. These standards are hereby adopted by reference and incorporated herein.

2. The minimum standards for the construction and installation of vertical platform lifts, inclined wheelchair lifts, inclined stairway chairlifts and residential elevators shall be ASME A18.1 2005, which is hereby adopted by reference and incorporated herein.

3. The minimum standards for the construction and demolition industry shall be ANSI/ASSE A10.4 - 2007, Safety Requirements for Personnel Hoists and Employee Elevators, which is hereby adopted by reference and incorporated herein.

4. This Rule does not include any later amendments or editions of the standards incorporated by reference.

4. Copies of these standards incorporated by reference can be viewed in the offices of the division or can be obtained by contacting the following:

American Society of Mechanical Engineers
22 Law Drive
P. O. Box 2300
Fairfield, NJ 07007-2300
1-800-843-2763.

www.asme.org

B. Installation Permit

1. Prior to the installation or construction of any elevator, escalator, or dumbwaiter or other conveyance, an installation permit shall be obtained from the department. The installation permit shall be posted at the job site in a conspicuous location near the location of the conveyance prior to work beginning on the installation.

2. Application for an installation permit shall be made on a form furnished by the department and shall be submitted by the installing contractor. The application shall require the submission of detailed plans and specifications.

3. Upon receipt of an application for installation, the required plans and specifications, and the required fee for an installation permit, the department shall review the application for compliance with the provisions of Ark. Code Ann. § 20-24-101 *et seq.* and these regulations. The department shall issue an installation permit or shall notify the applicant in writing of the reasons the installation permit is denied.

4. Any applicant who has been denied an installation permit by the department may appeal that denial to the Elevator Safety Board, provided a written request to appeal is received by the department within thirty (30) days of the notice of the denial.

C. Inspection and Testing

1. Prior to the operation of any new conveyance or the issuance of the operating permit, such installation shall be inspected and tested in conformity with these regulations by a licensed elevator inspector in the employ of the department or its authorized representative.

2. An inspection report shall be filed with the department by the inspector making the inspection within thirty (30) days after completion of the inspection. The inspection report shall be on a form furnished and approved by the department. It shall indicate whether the conveyance was installed in accordance with the plans and specifications approved by the department and meets the requirements of Ark. Code Ann. § 20-24-101 *et seq.* and these regulations.

D. Initial Operating Permit

1. The owner or operator of a conveyance shall obtain an initial operating permit within seven (7) days after the required date for filing the inspection report required by Ark. Code Ann. § 20-24-113(a) and Rule 010.05-011(C)(2) herein.

2. No operating permit shall be issued until all required fees have been paid.

3. If the inspection report required by Ark. Code Ann. § 20-24-113 and Rule 010.05-011(C)(2) herein indicates that there is a failure to comply with the plans and specifications approved by the department, Ark. Code Ann. § 20-24-101 *et seq.*, or these regulations, the

operating permit shall be denied. The department shall notify the owner or operator in writing of the reasons for the denial of an operating permit.

4. Any owner or operator who has been denied an operating permit by the department may appeal that denial to the Elevator Safety Board, provided a written request to appeal is received by the department within thirty (30) days of the notice of the denial.

E. Fees

1. Installation permits.

a. The following fees shall be paid to the department for installation permits:

Elevator	\$ 150.00
Escalator or moving walk	200.00
Dumbwaiter	100.00
Wheelchair lift	100.00
Workmen's hoist	200.00

2. A fee of one hundred dollars (\$100) shall be paid for installation permits for all other types of conveyances.

3. A final inspection fee and the fee for the initial operating permit are included in the installation permit fee. If a scheduled final inspection is canceled without due notice to the department or if the elevator is not complete in the judgment of the inspector, an additional fee of one hundred dollars (\$100.00) shall be charged to the elevator contractor for an additional final inspection.

4. The fee for the operating permit is established by Rule 010.05-015(F).

010.05-012 Alterations

A. Minimum Standards

All alterations and major repairs to conveyances shall be made in conformity with the same standards as established by Rule 010.05-011(A).

B. Alteration Permit

1. Prior to the alteration or major repair of any conveyance, an alteration permit shall be obtained from the department.
2. Application for an alteration permit shall be made on a form furnished by the department and shall be submitted by the installing contractor. The application shall require the submission of detailed plans and specifications.
3. Upon receipt of an application for alteration or major repair, the required plan and specifications, and the required fee for an alteration permit, the department shall review the application for compliance with the provisions of Ark. Code Ann. § 20-24-101 *et seq.* and these regulations. The department shall issue an alteration permit or shall notify the applicant in writing of the reasons the alteration permit is denied.
4. Any applicant who has been denied a permit for alteration or major repair by the department may appeal that denial to the Elevator Safety Board, provided written request to appeal is received by the department within thirty (30) days of the notice of the denial.

C. Inspection and Testing

1. Prior to the operation of any conveyance which has undergone an alteration or major repair and prior to the issuance of a new operating permit pursuant to Rule 010.05-012(D), such conveyance shall be inspected and required safety tests witnessed by a licensed elevator inspector in the employ of the department or its authorized representative.
2. An inspection report shall be filed with the department by the inspector making the inspection within thirty (30) days after completion of the inspection. The inspection report shall be on a form furnished and approved by the department. It shall indicate whether the conveyance was altered or repaired in accordance with the plans and specifications approved by the department and meets the requirements of Ark. Code Ann. § 20-24-101 *et seq.* and these regulations.
3. The department shall mail a copy of the inspection

report to the installing contractor and the owner.

D. Operating Permit

1. The owner or operator of a conveyance which has undergone an alteration or major repair shall obtain a new operating permit within seven (7) days after the required date for filing the inspection required by Ark. Code Ann. § 20-24-113(a) and Rule 010.05-012(C) herein.

2. No operating permit shall be issued until all the required fees have been paid.

3. If the inspection report required by Ark. Code Ann. § 20-24-113 and Rule 010.05-012(C) herein indicates that there is a failure to comply with the plans and specifications approved by the department, Ark. Code Ann. § 20-24-101 *et seq.*, or these regulations, the operating permit shall be denied. The department shall notify the owner or operator in writing of the reasons for the denial of an operating permit.

4. Any owner or operator who has been denied an operating permit by the department may appeal that denial to the Elevator Safety Board, provided a written request to appeal is received by the department within thirty (30) days of the notice of the denial.

E. Fees

1. The fee for an alteration permit shall be one hundred dollars (\$100.00).

2. A final inspection fee is included in the alteration permit fee. If a scheduled final inspection is canceled without due notice to the department or if the elevator is not complete in the judgment of the inspector, an additional fee one hundred dollars (\$100.00) shall be charged to the elevator contractor for an additional final inspection.

3. The fee for the operating permit is established by Rule 010.05-015(F) herein.

010.05-013 Existing Elevators

A. Minimum Standards

1. All conveyances shall be maintained by the owner or lessee in a condition that conforms to the standards established by the board which were in effect on the date of installation or the provisions of ASME A17.3-2005, whichever are more stringent.

2. Notwithstanding the provisions of ASME A17.3-2005, the owner or operator of any elevator without Phase I and Phase II fire service shall have a period of five (5) years from the effective date of these regulations or until alteration to install Phase I and Phase II fire service, whichever occurs first.

3. Notwithstanding the provisions of ASME A17.3-2005, Part 4.3.3 applicable to hydraulic elevators, the owner or operator of any hydraulic elevator with a flat-bottom jack shall be required to replace or retrofit to comply with A17.3, Part 4.3.3, within five (5) years from the effective date of these regulations or alteration, whichever occurs first.

4. This Rule does not include any later amendments or editions of the standards incorporated by reference.

5. Copies of these standards incorporated by reference can be viewed in the offices of the division or can be obtained by contacting the following:

American Society of Mechanical Engineers
22 Law Drive
P. O. Box 2300
Fairfield, NJ 07007-2300
1-800-843-2763
www.asme.org

B. Operation

1. Any conveyance which is out of operation or without an operating permit for twelve (12) months or more shall have a safety test or leak down test and a pressure test performed in the presence of a licensed elevator inspector in the employ of the department or its authorized representative before a new operating permit can be issued or before such can operate. Additionally, such conveyance shall conform

to the standards established by Rule 010.05-011 or have a variance issued pursuant to Rule 010.05-016 before an operating permit can be issued or before it can operate.

010.05.014 Periodic Inspections and Testing

A. Minimum Standards

1. All inspections and testing required by Ark. Code Ann. § 20-24-101 *et seq.* or these regulations shall be made in accordance with the standards established by these regulations and the American Society of Mechanical Engineers Guide for Inspection of Elevators, Escalators and Moving Walks, ASME A17.2 -2001, which is hereby adopted and incorporated herein.

2. This Rule does not include any later amendments or editions of the standards incorporated by reference.

3. Copies of these standards incorporated by reference can be viewed in the offices of the division or can be obtained by contacting the following:

American Society of Mechanical Engineers
22 Law Drive
P. O. Box 2300
Fairfield, NJ 07007-2300
1-800-843-2763
www.asme.org

B. Periodic Inspections

1. a. The owner or lessee of every power passenger elevator and escalator shall have it inspected periodically every sixth (6th) calendar month following the month in which the initial inspection was made.

 b. The owner or lessee of every power freight elevator and of every dumbwaiter and elevator driven by manual power shall have it inspected periodically every twelfth (12th) calendar month following the month in which the initial inspection was made.

2. Any inspection required by Ark. Code Ann. § 20-24-

112(a)(3) or this Rule 010.05-014(B)(1):

a. may be made during the month following the calendar month during which such inspection is due; and

b. shall be made only by elevator inspectors licensed in accordance with the provisions of Ark. Code Ann. § 20-24-108 and 20-24-109 and Rule 010.05-010.

3. In addition to required inspections, the department or its authorized representative may designate a licensed inspector in its employ to make such additional inspections as may be required to enforce the provisions of this chapter and these rules and regulations.

C. Tests

1. All tests shall be made in accordance with the applicable ASME Code as adopted herein.

2. Elevator inspectors shall not be required to perform any tests.

3. Tests required by these rules and regulations shall be made by a licensed elevator mechanic in the presence of a licensed elevator inspector in the employ of the department or its authorized representative.

D. Inspection Reports

1. A report of every required inspection shall be filed with the department or its authorized representative by the inspector making the inspection, on a form approved by the department or its authorized representative, within thirty (30) days after the inspection or test has been completed.

2. In the event the inspection report required by this Rule 010.05-014(D)(1) and Ark. Code Ann. § 20-24-113 is not filed within thirty (30) days after the final date when the conveyance should have been inspected, the department shall designate a licensed inspector in its employ to make the inspection and report required.

E. Fees

1. For each inspection and report made at the direction of the department, the owner, lessee, or insurance company responsible for the report of inspection shall pay to the department a fee of one hundred dollars (\$100.00). The fee shall be paid directly to the department and shall be the only fee or charges for which such owner, lessee, or insurance company shall be liable for the inspection required by Ark. Code Ann. § 20-24-112(a).

2. For witnessing the performance of all safety tests required by Ark. Code Ann. § 20-24-101 *et seq.* or these regulations, the owner, lessee, or insurance company responsible for the test shall pay to the department a fee of seventy-five dollars (\$75.00).

010.05-015 Operating Permit

A. Permit Required

1. No conveyance shall operate unless the owner or lessee has obtained an operating permit from the department. Operation of a conveyance without a valid operating permit shall be grounds for:

- a. an immediate order, or red-tag to discontinue use, and
- b. a fine pursuant to Ark. Code Ann. § 20-24-103 and Rule 010.05-017.

2. An operating permit shall be issued for a period of one (1) year and the expiration date shall appear on its face.

B. Display

The permit shall be posted conspicuously in the car of the elevator or lift and on or near the dumbwaiter or escalator.

C. Permit Information

1. The operating permit shall reflect on its face the following:
- a. the state number, or AS number, assigned by

the department to that conveyance;

- b. the type of equipment for which it is issued;
- c. in the case of elevators, whether passenger or freight;
- d. the owner or lessee to whom the permit is issued;
- e. the location of the conveyance;
- f. the contract load and rated speed; and
- g. the expiration date.

2. In addition to other requirements, the operating permit for vertical wheelchair lifts, inclined wheelchair lifts, and inclined stairway chairlifts shall state the following:

LIMITED USE ONLY -
NOT FOR GENERAL PUBLIC USE

D. Denial of an Operating Permit

1. No operating permit shall be issued if the fees required by Ark. Code Ann. § 20-24-116 and Rule 010.05-015(F) herein have not been paid.

2. The department may deny an operating permit for cause, which shall include the failure to comply with the provisions of Ark. Code Ann. § 20-24-101 *et seq.*; these rules and regulations; or the detailed plans and specifications approved by the department at the time of installation. In determining whether there exists cause to deny an operating permit, the department may rely on an inspection report filed by a licensed elevator inspector.

3. The department shall notify the owner or lessee in writing of the reasons the operating permit is denied; the changes necessary for compliance; and their right to appeal to the Elevator Safety Board.

4. Any owner or lessee who has been denied an operat-

ing permit by the department may appeal that denial to the Elevator Safety Board, provided a written request to appeal is received by the department within thirty (30) days of the notice of the denial.

5. The Elevator Safety Board may require, as a condition of maintaining his/her license, the presence of any elevator inspector upon whose report the denial of an operating permit was based at any hearing on such denial.

E. Revocation of an Operating Permit

1. The department may immediately revoke an operating permit if it determines there is a failure to comply with the provisions of Ark. Code Ann. § 20-24-101 *et seq.*; these rules and regulations; or the detailed plans and specifications approved by the department at the time of installation and such elevator, escalator or dumbwaiter is in an unsafe condition, so that its continued operation may be dangerous to the public safety. In making such a determination the department may rely on an inspection report filed by a licensed elevator inspector.

2. In order to immediately revoke an operating permit, the department shall place a red tag or warning notice on or in the conveyance notifying the owner or lessee and the public that its use has been ordered to be discontinued. Such warning shall read as follows:

WARNING ORDER

The Arkansas Department of Labor has determined that this elevator or conveyance is in an unsafe condition, so that its continued operation would be dangerous. The Department of Labor has ordered that the use of this elevator or conveyance be discontinued until it has been made safe in conformity with Arkansas Law and the rules and regulations of the Arkansas Elevator Safety Board.

Continued operation of this elevator or conveyance or removal of this notice may result in criminal and/or civil penalties.

This action is taken pursuant to the authority granted by Ark. Code Ann. §§ 11-2-

117(C) and 20-24-116.

The specific conditions the Department of Labor has found which render this elevator unsafe are as follows:

This tag shall only be removed by authority of the Chief Elevator Inspector.

Director of Labor
State of Arkansas

By:
Dated:

Arkansas Department of Labor
10421 West Markham Street
Little Rock, Arkansas 72205

3. The department's representative shall provide immediate written notice to the owner or lessee or agent of either present at the location of the conveyance, which notice shall include the following:

- a. a copy of the red tag or warning;
- b. the reason for revocation of the operating permit;
- c. the changes necessary for compliance; and
- d. the date, time, and place of a hearing on the revocation before a hearing officer designated by the director to hear such matters.

4. In the event the owner or lessee or agent of either is not present at the location of the conveyance, the department shall mail the notice required by this Rule 010.05-015(3) to the owner or lessee within twenty-four (24) hours to the address on file with the division.

5. The department shall hold a hearing on the immediate revocation of an operating permit within five (5) days of placing the red

tag or warning on the conveyance. The department may extend the time for holding such a hearing upon the request, in advance, of the owner or lessee. The decision of the hearing officer shall constitute the final action of the department.

6. Any owner or lessee may appeal the department's final action on the immediate revocation of an operating permit to the Elevator Safety Board, provided a written request to appeal is received by the department within thirty (30) days of the department's final action.

7. a. The department may request the Elevator Safety Board to revoke an operating permit if the department determines there is a failure to comply with the provisions of Ark. Code Ann. § 20-24-101 *et seq.*; these rules and regulations; or the detailed plans and specifications approved by the department at the time of installation. In determining whether there exists cause to seek revocation of an operating permit, the department may rely on an inspection report filed by a licensed elevator inspector.

b. The department shall notify the owner or lessee in writing that it has requested the revocation of the owner or lessee's operating permit; the reasons the department is seeking the revocation; the changes the department contends are necessary for compliance; and the date, time and place of a hearing before the Elevator Safety Board.

c. If, after hearing, the board determines that there has been a failure to comply as alleged by the department, it shall revoke the operating permit of the owner or lessee.

F. Fees

1. The annual fee to be charged for an operating permit is established by Ark. Code Ann. § 20-24-116, which provides:

- a. Dumbwaiters. \$30.00 annual
- b. Elevators and wheelchair lifts. . . . \$50.00 annual
- c. Escalators and moving walks. . . . \$85.00 annual

2. A twenty percent (20%) penalty may be assessed when the fee is past due by thirty (30) days.

3. a. The fee for a temporary operating permit on a new installation shall be one hundred dollars (\$100.00) and shall be good for a period of thirty (30) days. It may be renewed for additional period of thirty (30) days for a fee of fifty dollars (\$50.00). Retesting is required to renew after an initial sixty (60) days.

b. The fee for a temporary operating permit for a workman's hoist shall be fifty dollars (\$50.00) and shall be good for a period of ninety (90) days.

G. Requirement to Keep Current Addresses on File

All owners or operators holding an operating permit issued by the agency are required to provide the agency with information so that the agency can remain in contact and provide notice of complaints and/or hearings. The permit holder is required to provide written notice to the division of any change in business and/or residence address within 10 working days of the change. Service of notices of hearing sent by mail will be addressed to latest address on file with the agency.

H. Requirement to Report Accidents

1. Any mechanical, structural or electrical defects directly affecting rider safety for which a conveyance is closed for use for a period of time more than eight (8) hours, must be reported in writing by the owner or operator to the Department of Labor within twenty-four (24) hours.

2. The owner or operator shall immediately cease to operate any conveyance involved in a fatality or serious physical injury, except to the extent necessary to protect life, limb and property. Such accident shall be reported in writing by the owner or operator within twenty-four (24) hours to the Department of Labor. For the purposes of this requirement, the term "serious physical injury" shall mean any significant injury that requires immediate medical examination or treatment by a licensed physician.

3. Unless authorized in writing by the department, no conveyance may be operated, altered, repaired, or tampered with, except to protect life, limb and property, following an accident involving a

serious injury or death until the department has completed an investigation concerning the accident.

010.05-016 Variances

A. Generally

Ark. Code Ann. § 20-24-106(d) authorizes the board in any particular case to grant exceptions and variances which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.

B. Application and Approval

1. An application for a variance shall be complete and shall be submitted by the owner or a licensed elevator contractor on behalf of the owner to the department on a form approved by the department. The application shall be accompanied by the following:

 a. detailed plans and specifications as required by Rule 010.05-011 or 010.05.012 herein;

 b. a fee of one hundred dollars (\$100.00); and

 c. citation to the specific standard(s) from which a variance is sought.

2. Failure to submit the items required by Rules 010.05-016 (B)(1) above shall result in summary dismissal of the variance request or application.

3. The department shall review the application for variance and its attachments. The department may conduct an on-site inspection. The department shall prepare a staff report and recommendation which shall include a copy of any inspection report and copies or citations to any applicable ASME Code standards.

4. The department shall notify the applicant for the vari-

ance of the date, time, and place of the hearing before the board on the application for a variance. Such notice shall include a copy of the department's staff report and recommendation.

5. After hearing, the board shall grant or deny the variance. The board may grant a variance conditioned upon the provision of alternate means of providing for public safety, or may grant a variance for a limited time only.

6. If the board grants a variance, an order shall be issued by the board. Such an order shall reflect the following:

- a. the name of the petitioner;
- b. the state number, or AS number, assigned by the department if it is an existing conveyance;
- c. the type of equipment for which it is issued;
- d. the owner or lessee on whose behalf the variance is sought;
- e. the location of the elevator, escalator, or dumbwaiter or other conveyance; and
- f. any conditions imposed by the board.

C. The owner or lessee shall maintain the variance order at the location of the conveyance and make it accessible to any licensed elevator inspector.

D. Specific Petitions

1. The board will not grant a variance to permit the operation of an elevator for use by individuals with physical disabilities or any other use except in compliance with the provisions of Part V, Limited-Use/Limited-Application Elevators, ASME A17.1-2004 and 2005 Supplement and 2005 Addenda or A18.1 2005.

2. The board will not grant a variance to permit the operation of a residential elevator in a non-residential application.

3. The board recognizes that installation of a convey-

ance is expensive. Therefore, cost-savings alone is not evidence of an undue hardship.

010.05-017 Civil Fines and Other Enforcement

A. Civil fines, Generally.

1. Ark. Code Ann. § 20-24-103 provides that any person, owner, lessee, partnership, association, corporation or inspector who violates any provision of Ark. Code Ann. § 20-24-101 through 20-24-120 shall be subject to a civil fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1000) for each offense.

2. Each day during which a violation continues shall be a separate offense.

B. Assessment of Fines

1. The Elevator Safety Division will notify the person, owner, lessee, partnership, association, corporation, inspector, licensee, or permittee of any assessment of a civil fine or penalty. Notice shall be provided in the same manner as a notice of hearing provided for in Ark. Code Ann. § 25-15-208 and Rule 010.05-009 herein.

2. The notice of a fine or penalty assessment shall include the following information:

- a. the nature of the violation(s);
- b. the date(s) of the violation(s);
- c. the amount of the civil penalty or fine;
- d. a statement that the civil fine or penalty will be final unless it is appealed to the Elevator Safety Board by making a written request to the Board for a hearing within thirty (30) days of the notice of assessment. Any hearing before the Board will be conducted in accordance with Ark. Code Ann. §§ 25-15-208 and -213 and Rule 010.05-009 herein.

3. In determining the amount of the fine or penalty, the

division or the Board may consider those factors listed in Rule 010.05-009(R) herein.

4. The division has the burden of proving the alleged facts and violations of law stated in the notice.

5. No fine shall be assessed later than two (2) years from the date of the occurrence of the violation, unless such violation is continuing in nature.

C. Payment of Fine

1. If a fine or penalty is not been paid within sixty (60) days of the final administrative determination, the Director of the Department of Labor may file a civil action in a court of competent jurisdiction to recover the fine or penalty.

2. No license or permit may be renewed by any licensee or permittee with an unpaid fine or penalty. Further, failure to pay a fine or penalty shall be cause for revocation of any license or permit.

D. Injunction

In addition to other enforcement action, the Director is authorized to petition a court of competent jurisdiction to enjoin or restrain violations of Ark. Code Ann. § 20-24-101 *et seq.*

010.05-018 Accessibility to the Disabled

A. 1. In addition to the standards imposed by Rules 010.05-011; 010.05-012; and 010.05.013 herein, the board hereby adopts and incorporates herein the American National Standards Institute Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People, ANSI A117.1, 2003.

2. This Rule does not include any later amendments or editions of the standards incorporated by reference.

3. Copies of these standards incorporated by reference can be viewed in the offices of the division or can be obtained by contacting the following:

American National Standards Institute
25 West 43rd Street
New York, NY 10036
www.ansi.org

B. Braille tags. In all publicly owned buildings containing passenger elevators, braille tags shall be affixed on or immediately adjacent to all elevator pushbuttons, levers, or switches in order that blind persons may operate the elevators properly without assistance from sighted persons. "Publicly owned buildings" includes those buildings which are owned or operated by a municipal, county, or state government. This requirement does not apply to elevator pushbuttons located outside the elevator car and used to call the elevator for travel "up" or "down".

010.05-019 Other Appeals

As provided in Ark. Code Ann. § 20-24-119:

(a) Any person aggrieved by an order or act of the Department of Labor or its authorized representative under this chapter may, within fifteen (15) days after notice thereof, appeal from the order or act to the board which shall, within thirty (30) days thereafter, hold a hearing of which at least fifteen (15) days written notice shall be given to all interested parties.

(b) The Elevator Safety Board shall, within thirty (30) days after the hearing, issue an appropriate order modifying, approving, or disapproving the order or act.

(c) A copy of the order by the board shall be served upon all interested parties.

(d) Within thirty (30) days after any order or act of the board, any person aggrieved thereby may file a petition in the chancery court of the county in which the aggrieved person resides, for a review thereof.

(e) The court shall summarily hear the petition and may make appropriate order or decree.

010.05-020 Repealer, Effective Date and History

A. All previous rules and regulations of the Elevator Safety Board are hereby repealed.

B. The effective date of these rules and regulations is the 1st day of September 1, 2006.

C. History.

1. The Elevator Safety Board first promulgated regulations effective August 27, 1963. These regulations were amended effective May 8, 1964; May 4, 1965; July 1, 1968; April 1, 1969; May 19, 1969; September 19, 1969; and July 1, 1975.

2. All previous rules and regulations of the Elevator Safety Board were repealed and new rules and regulations were adopted effective February 1, 1994.

3. All previous rules and regulations of the Elevator Safety Board were repealed and new rules and regulations were adopted effective September 1, 2006.

NOTE: Effective June 1, 2008, Regulation 010.05-011 was amended to adopt ASME A17.1 - 2007 and ANSI/ASSE A10.4 - 2007.

